

Citation: *R. v. Hanson*, 2006 YKTC 43

Date: 20060421  
Docket: T.C. 05-00079A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

**REGINA**

v.

**ADAM HANSON**

Appearances:  
David McWhinnie  
Malcolm Campbell

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] RUDDY T.C.J. (Oral): Adam Hanson has been convicted, following trial, of an assault causing bodily harm. The victim was his then spouse, Phyllis Hanson. The assault occurred in March of 2004. Mr. Hanson, who had been consuming alcohol and some marijuana, was angry with his wife for not supporting him in relation to an incident at work. As she was walking away he grabbed her arm and twisted it behind her back. He then pushed her to the floor with her arm breaking her fall. As a result of the assault, Mrs. Hanson suffered a significant break to her arm which was serious enough to require that she be sent to Vancouver, where pins and metal plates were used to repair the damage.

[2] Mrs. Hanson has filed a victim impact statement which speaks to the impact of the assault and the resulting injuries. Physically, she speaks of constant pain, physical therapy and the sense of her arm at times not feeling as if it belongs to her. Mentally, she speaks of the loss of her sense of self and her ability to trust others and her concerns regarding the impact on her two young daughters.

[3] In determining an appropriate sentence I have had the benefit of a thorough pre-sentence report setting out Mr. Hanson's background. Mr. Hanson is 41 years of age. His upbringing appears to be unremarkable. His education includes a university degree. His work history is solid, including a number of management and other responsible positions. Also of note to me, he comes before the Court with no prior criminal record. Furthermore, he is rated at a low risk to re-offend using the LSI-R. However, using the SARA, he is rated as a moderate to re-offend against an intimate partner.

[4] A particular concern to me, Mr. Hanson does not accept responsibility for his behaviour but rather views himself as the victim in the relationship. He blames Mrs. Hanson for his current circumstances and cites her past abuse and her mental health issues as the reason for the breakdown of the marital relationship. He also admits to frequent breaching of his no contact condition, but excuses his behaviour by stating that it is Mrs. Hanson who contacts him and he does not want to lose access to his two children.

[5] Against this backdrop, Crown has suggested a conditional sentence of six to eight months plus a period of probation. Defence suggests that a conditional discharge would be appropriate.

[6] In determining the appropriateness of both submissions, I have taken some time to review the sentencing provisions of the *Criminal Code* and case law on the imposition of both conditional sentences and conditional discharges, particularly in the context of a domestic assault. This review makes it abundantly clear to me that in such cases the dominant sentencing principles are denunciation and deterrence. In *R. v. N.R.G.*, [2004] B.C.J. No. 2313 (QL), the B.C. Supreme Court stated:

In cases of domestic assault, like the one here, deterrence, both general and specific, and denunciation must be the paramount considerations in imposing sentence. The offence is a breach of a position of trust and is thereby aggravated. While not every instance of domestic violence requires imposition of a custodial term, such a term should be normal where significant bodily harm has been inflicted.

[7] In *R. v. Taylor*, [2001] Y.J. No. 150 (QL), Judge Lilles of this Court noted that:

...when cases come to the court and result in a conviction, there is an opportunity to denounce domestic violence in clear terms and to steer those offenders who are clearly motivated to address their problems into court supervised programming and treatment. Those who are not motivated or refuse programming, should be sentenced in a way which reflects the seriousness of their offence, and the continuing risk they present to society, with the hope that they will be specifically deterred from repeating similar offences in the future.

[8] In s. 718.2(2) of the *Criminal Code*, Parliament has similarly recognized the gravity of domestic violence, making it a statutorily aggravating factor to abuse a spouse or child in committing an offence.

[9] Being mindful of these principles, I will consider firstly the defence submission for a conditional discharge. In making the submission, defence counsel notes that the offence was out of character and that Mr. Hanson suffered disgrace and disapprobation as a result of this conviction. His employment and his employment prospects have both been negatively affected.

[10] The test for granting a discharge is set out in s. 730(1) of the *Criminal Code* which provides that an accused may be discharged where it would be in the best interest of the accused and not contrary to the public interest. The first branch of the test is rarely a difficult hurdle and indeed is not one in this case. Mr. Hanson has no prior criminal record and his employment history reflects both work and work-related travel out of the country. A criminal conviction could well hinder his future employment prospects. However, as in most cases, it is the public interest branch of the test which is the more problematic of the two.

[11] Defence counsel argues that a discharge would not be contrary to the public interest as Mr. Hanson has already been specifically deterred as a result of the disgrace and disapprobation he has suffered. Mr. Campbell argues that the public interest would best be met by giving Mr. Hanson the tools to govern himself appropriately when in a troubled relationship. He further argues that general deterrence can be met by placing Mr. Hanson on strict conditions for a lengthy period of time.

[12] With respect, I must disagree. Mr. Hanson's ongoing unwillingness to accept responsibility for his behaviour, and his victim blaming, suggests to me that specific

deterrence has not, in fact, been achieved. Furthermore, while Mr. Hanson indicates a willingness to engage in programming if so ordered, he has not expressed any recognition of a need for such programming. This does not bode well in terms of the prospects for rehabilitation.

[13] Lastly, I would note that domestic violence is both a serious and prevalent offence in this community. I would also note that the particular circumstances of the offence before me are extremely serious. I am not prepared to adopt defence counsel's submission that I divorce the assault from the resulting injuries and view the assault itself as a minor one. Force was used and that force resulted in significant injuries. I am not satisfied that the public interest can be met by a discharge in such circumstances. At the very least, a criminal conviction is necessary to clearly send the message that such behaviour will not be tolerated.

[14] In addition to a criminal record, I am of the view that a jail sentence is necessary to address the requirements of denunciation and deterrence. The primary question for me is whether Mr. Hanson should be given the opportunity to serve his sentence conditionally within the community. The test in imposing a conditional sentence is set out in s. 742.1. The sentence must be one of less than two years, and I must be satisfied that the offender would not endanger the safety of the community and that such a sentence would be consistent with the fundamental purpose and principles of sentencing.

[15] In terms of the first prerequisite, the range suggested by the Crown, which, in my view, is an appropriate range, is one of six to eight months, clearly, well under the

two year limitation. I am of the view that given Mr. Hanson's antecedents and particularly the lack of a prior criminal record that a sentence of six months would be appropriate. In terms of the second prerequisite I am equally satisfied that Mr. Hanson would not endanger the safety of the community if allowed to serve his term within the community on conditions.

[16] It is the third prerequisite which is the most troubling for me in this case. This is not a situation where there has been a full acceptance of responsibility with good prospects for rehabilitation, and this has raised a question in my mind about whether the dominant sentencing principles of denunciation and deterrence can be achieved through a conditional sentence. Again, I have taken the opportunity to review the authorities on this particular point.

[17] In *R. v. Proulx*, [2000] 1 S.C.R. 61 the Supreme Court of Canada discussed the application of the conditional sentence provisions at length, stating:

The conditional sentence facilitates the achievement of both of Parliament's objectives. It affords the sentencing judge the opportunity to craft a sentence with appropriate conditions that can lead to the rehabilitation of the offender, reparations to the community, and the promotion of a sense of responsibility in ways that jail cannot. However, it is also a punitive sanction. Indeed, it is the punitive aspect of a conditional sentence that distinguishes it from probation. As discussed above, it was not Parliament's intention that offenders who would otherwise have gone to jail for up to two years less a day now be given probation or some equivalent thereof.

Thus, a conditional sentence can achieve both punitive and restorative objectives. To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction than incarceration. Where the need for punishment is particularly pressing, and there is little opportunity to achieve any restorative objectives, incarceration will likely be the more attractive sanction. However, even where restorative objectives cannot be readily satisfied, a

conditional sentence will be preferable to incarceration in cases where a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration. This follows from the principle of restraint in s. 718.2(d) and (e), which militates in favour of alternatives to where incarceration where appropriate in the circumstances.

[18] In the decision of *R. v. Wells*, [2000] 1 S.C.R. 207 (QL), the Supreme Court of Canada went on to say that:

Depending on the severity of the conditions imposed, a conditional sentence may be reasonable in the circumstances where deterrence and denunciation are paramount considerations. Ultimately, however, the determination of the availability of the conditional sentence depends on the sentencing judge's assessment of the specific circumstances of the case, including a consideration of the aggravating factors, the nature of the offence, the community context, and the availability of conditions which have the capacity to properly reflect society's condemnation.

[19] In applying the law to the circumstances of this case, I am mindful of the fact that this offence represents essentially an isolated incident of domestic violence. There have been no other substantiated allegations of spousal abuse brought to my attention either from before or after this incident in March of 2004, some two years ago. I am also cognizant of the fact that Mr. Hanson provides financial support to five children, the two shared with Mrs. Hanson, and three others from a prior marriage. Actual incarceration of Mr. Hanson would no doubt result in financial hardship to the children and their mothers. In addition, I note the availability of effective programming in the spousal abuse program and the fact that they have had some success with resistant offenders. Lastly, I am particularly persuaded by the effective and rigorous management of conditional sentences provided by our local probation services.

[20] On balance, and after much review, I am satisfied that using strict conditions, the principles of denunciation and deterrence can be met in this case by imposing a conditional sentence. Accordingly, there will be a sentence of six months to be served conditionally within the community on the following conditions.

[21] There will be the statutory terms, Mr. Hanson, that you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Report to a conditional sentence supervisor within two working days and thereafter when required by the supervisor and in the manner directed by the supervisor;
4. Remain within the Yukon Territory unless you have permission from your supervisor;
5. Notify the supervisor in advance of any change of name or address;
6. Promptly notify the supervisor of any change of employment or occupation;
7. Reside as approved by your supervisor.;
8. Abide by a curfew by remaining within your place of residence between the hours of 2:00 p.m. and 10:00 a.m. daily, except when actually working or when in transit to and from your employment or except with the prior written permission of your supervisor;
9. Abstain absolutely from the possession or consumption of alcohol or controlled drugs or substances, except with accordance with a prescription given to you by a qualified medical practitioner;

10. Provide a sample of your breath or urine for the purposes or analysis upon demand by a peace officer who has reason to believe that you may have failed to comply with this condition;
11. You are not to attend at any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
12. You are to take such alcohol and/or drug assessment or programming as directed by your conditional sentence supervisor;
13. You are to report to the Family Violence Prevention Unit to be assessed, and attend and complete the spousal abuse program as directed by your supervisor;
14. You are to take such other assessment, counselling and programming as directed by your supervisor;
15. You are to have no contact directly or indirectly or communication in any way with Phyllis Hanson, except for the purposes of arranging access to your children;
16. You are not to attend at or within 10 metres of 206 - 2 Thompson Road, Whitehorse Yukon, except for the purpose of picking up or dropping of your children as previously arranged with Phyllis Hanson;
17. You are to provide your supervisor with consent to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this conditional sentence order.

[18] The conditional sentence will be followed by a period of probation of 18 months.

The terms and conditions of the probation order will be those set out in the pre-sentence report, which are as follows. The statutory terms that you:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. Notify the probation officer in advance of any change of name or address;
3. Promptly notify the probation officer of any change of employment or occupation;
4. Report to a probation officer upon completion of your conditional sentence and thereafter when and in the manner directed by the probation officer;
5. Take such alcohol and/or drug assessment counselling or programming as directed by your probation officer;
6. Report to the Family Violence Prevention Unit to be assessed, and attend and complete the spousal abuse program as directed by your probation officer;
7. Take such other assessment, counselling and programming as directed by your probation officer;
8. No contact directly or indirectly or communication in any way with Phyllis Hanson, except for the purposes of arranging access to your children;

9. Not attend at or within 10 metres of 206 - 2 Thompson Road, Whitehorse, Yukon, except for the purposes of picking up or dropping off your children as previously arranged with Phyllis Hanson.
10. Provide your probation officer with consent to release information with regard to your participating in any programming or counselling that you have been directed to do pursuant to this order.

[19] Mr. Campbell, there are mandatory orders that your friend spoke to at the last appearance and I do not believe you made any submissions. I wanted to give you the opportunity, those being the DNA order and firearms prohibition.

[20] MR. CAMPBELL: I have no submissions.

[21] THE COURT: Thank you. As this is a primary designated offence, I will make the requisite order that Mr. Hanson provide such samples of his blood as are necessary for DNA testing and banking and he will be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition or explosive substance for a period of ten years.

[22] Counsel, is there anything further?

[23] MR. MCWHINNIE: There is the matter of the victim surcharge, Your Honour. I think it is \$100. In his situation, I think he might have to have time to pay. With respect to the firearm prohibition, if he has any firearms, that needs to be canvassed and he needs a reasonable time to dispose of them, otherwise they end up forfeit to us and that was not what was intended, I don't think.

[24] MR. CAMPBELL: Two months time to pay the victim fine surcharge, and he has no firearms.

[25] THE COURT: Okay. Two months time to pay; the victim fine surcharge is \$100.

[26] MR. CAMPBELL: I just note that very shortly Mr. Hanson will be in breach of his curfew. I assume that some arrangement --

[27] THE COURT: He can have the express permission of the Court today to --

[28] MR. MCWHINNIE: He has to remain for a period of time to sign his paperwork anyways.

[29] THE COURT: Exactly. He will need to attend over at Probation with that paperwork. Would you like that specified in the order itself?

[30] MR. CAMPBELL: I suspect that my friend and I are clear on what is going to happen and these orders are not going to be transmitted anywhere that can enforce them until after he is already home. For signing the papers, will that be done this afternoon?

[31] THE COURT: Yes, it will.

[32] MR. CAMPBELL: Oh, okay.

[33] THE COURT: Thank you.

---

RUDDY T.C.J.